

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5200 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MAITRINAGAR EMPLOYEES' (KARMACHARI) COOP HSG. SOC LTD

Versus

STATE OF GUJARAT

Appearance:

MR CL SONI for Petitioner
MR SN SHELAT, ADDL.ADVOCATE GENERAL WITH
MR TH SOMPURA ASSTT. GOVERNMENT PLEADER for
Respondent No.1 and 2
MR AJ PATEL with MR NITIN N PANDYA
for Respondent No. 3,4 and 5.

CORAM : MR.JUSTICE H.L.GOKHALE

Date of decision: 20/11/97

C.A.V.JUDGEMENT

This petition filed by the petitioner Housing Society under Art. 226 of the Constitution of India raises the question as to whether the decisions of the Respondent No.1 - State of Gujarat and Respondent No.2 (Additional Collector, Rajkot) to allot certain urban vacant lands in Rajkot to Respondents Nos. 3 to 5 Housing Societies ignoring the claim of the petitioner society, are unfair, unjust and illegal and violative of

Article 14 of the Constitution of India and consequently whether the said decisions should be interfered with and if so what directions are required.

2. The petitioner is a registered Co-operative Housing Society of Government employees having 50 members. It applied for allotment of land bearing Survey No. 440 in the City of Rajkot in the year 1990 under Sec.23 of the Urban Land (Ceiling and Regulations) Act, 1976. That request was not entertained since the particular survey number was under litigation. The petitioner society thereafter made another application on 19/5/1992 for the allotment of land bearing Survey No. 438 of City of Rajkot for 40 members. The respondents nos. 3,4 and 5 are proposed co-operative societies of Government employees. They also applied for allotment of land from the same survey number on 18/2/1992, 15/2/1992 and 15/6/1992 respectively for the benefit of their members. It is relevant to note that the members of the petitioner as well as Respondent Nos. 3,4 and 5 are Government employees belonging to Class III or Class IV. The respondent No.1 herein is the State of Gujarat through the Secretary, Revenue Department and the Respondent No.2 is the Additional Collector and Competent Authority under the Urban Land (Ceiling and Regulation) Act, Rajkot.

3. The Excess Land Distribution Committee for District Rajkot (District Land Committee for short) first met on 30th of June, 1992. It had in all 13 applications before it which included petitioner society and respondent nos. 3 and 4 societies. There was no application of respondent no.5 society before the Committee at that time. Amongst others, the Committee decided to recommend a parcel of land admeasuring 3000 sq.mts. for 30 members from final plot Nos. 287/1 and 285/2 (of Survey No. 438) to the petitioner society. The request of respondent no.4 society was also similarly entertained for 30 members. The application of respondent No.3 society was however kept pending. The Committee again met on 5/8/1992, since a part of the concerned land from Survey No. 438 admeasuring 8324 sq.mts. was available for effecting allotment. This time the Committee decided to recommend allotment of 6674 sq.mts. out of final Plot No. 287/1 (from Survey No. 438) for 60-61 members to the respondent no.3 society whose application had been earlier kept pending. As far as the respondent no.5 society is concerned, its application came up before the Committee for the first time and it was decided to recommend this society for 15 members with an area of 1650 sq.mts from final Plot No. 285/3. Thus the position as per the recommendations

emerges as follows :-

Sr. No	Name of Society	Total Members	Date of Demand	Recomm- ended Members	Area in Sq.Mts.
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Recommended on 30-6-1992

1.	Shree Tripada Society (Respondent No.4)	35	15.2.92	30	3300.00
2.	Shree Maitrinagar Society (Petitioner)	40	19.5.92	30	3300-00
3.	Shree Vechanvera	120	19.5.92	80	9000-00

Recommended on 5-8-1992

4.	Shree Vividh Society (Respondent No.3)	120	18.2.92	60-61	6675-00
5.	Shri Ankur Society (Respondent No.5)	48	15.6.92	15	1650-00

Total: 23,925-00

4. It appears that there was some controversy about the price at which the lands were to be allotted to the Societies concerned. The Deputy Town Planning Officer, Rajkot had initially informed the Collector that for the land in question, Rs.550/- per sq.mt. would be proper price. The Collector appears to have asked him to re-examine the price whereafter the Dy. Town Planner informed the Collector that the real market price as on 28/8/1992 was in the range of Rs.850/- to Rs.1,000/depending on the location of the land. (This is as per the reply on behalf of the State Government in this matter) . The petitioner as well as Respondent Nos. 3,4 and 5 societies made representations against that price contending that it was excessive. The respondent Nos. 4 and 5 went on making representation separately and collectively objecting to that price. It appears that in May, 1997, respondent nos. 3,4 and 5 ultimately showed readiness to take the land at Rs.1,000/- per sq.mt. It is the case of the petitioner that the petitioner society had undoubtedly a status which was not lesser than that of the respondents nos. 3,4 and 5 inasmuch as the District Land Committee had made recommendations in its favour also. It is the further case of the petitioner that on the Respondents Nos. 3,4 and 5 agreeing to accept the price of Rs.1,000/-, the

Respondents Nos.1 and 2, decided to allot almost the entire land of Survey No. 438 to Respondent Nos. 3,4 and 5 including the parcel that was recommended in favour of petitioner without any notice or intimation to petitioner society. The petitioner society learnt that this decision was communicated to the Respondents Nos. 3,4 and 5 on 31/5/1997. The petitioner society therefore submitted to the Government on 7/6/1997 that it should not be excluded and it may be similarly allotted part of the land of Survey No. 438 which had been recommended to it by the District Land Committee at Rs.1,000/- per sq.mt. It also filed necessary affidavit before the Government on 25/6/1997. There was no proper response from the Respondents Nos.1 and 2. It was, therefore, constrained to file this petition on 16/7/1997.

5. As stated above, the petitioner challenges the decisions of the Respondents Nos. 1 and 2 in favour of Respondents Nos. 3,4 and 5 ignoring the claim of the petitioner society. Amongst others, the petitioner has sought interim relief in prayer clause 11(D) restraining the Respondents Nos. 1 and 2 from acting any further in the matter of granting land to Respondents Nos. 3,4 and 5. The matter came up before me on 17/7/1997 when Mr. C.L.Soni, learned Counsel appearing for the petitioner prayed for interim relief. Mr. A.J.Patel appeared with Mr. N.N.Pandya for the Respondents Nos. 3 to 5 who had filed Caveats. He tendered two affidavits on behalf of Respondents Nos. 3 to 5, both affirmed by one Jayantilal Vasoya, President of Respondent No. 3 society. After hearing both learned Counsel at length and in view of the narration of facts as stated above, I thought it necessary to grant ad-interim relief in terms of prayer Clause 11(D) until further orders and the same was accordingly granted. Notice was also directed to be issued to Respondents Nos. 1 and 2 making it returnable on 31st July, 1997.

6. The above referred Mr. Vasoya filed a further affidavit in reply on 28/7/1997 on behalf of Respondents nos. 3 to 5. One Mr. H.J.Shah, Deputy Secretary of the Revenue Department, filed an affidavit-in-reply on behalf of Respondents Nos. 1 and 2 on 30th of July, 1997. A rejoinder was filed to the affidavits of Respondents Nos. 3 to 5 by one Shri Kaladhar Arya, President of petitioner society on 31st July, 1997. Mr. Arya filed a separate rejoinder on the same day i.e. on 31/7/1997 to the reply filed on behalf of the State. The Affidavit-in-sur-rejoinder thereto was filed by above referred Jayantilal Vasoya on behalf of Respondents Nos. 3 to 5 on 4th of August, 1997. Since the matter is concerning the allotment of land to Government employees

and since all of them belong to Class III an Class IV and also since the members of Respondents Nos. 3 to 5 had in the meanwhile made their payment to the Respondent Nos. 1 and 2, I thought it fit that the matter should be heard finally at the earliest. In fact both learned Counsel appearing for the parties as well as Mr. S.H.Sompura, learned Assistant Government Pleader suggested this course of action. On 12/8/1997, the matter was therefore directed to be placed for final disposal on 26th of August, 1997, Rule was issued and service thereof was waived on behalf of the respondents. The matter was heard at length thereafter from time to time, it was directed to be treated as Part Heard on 10/9/1997 and finally on 22/10/1997, the case was adjourned for verdict to 20/11/1997 due to ensuing Diwali Vacation. As stated above, I have heard learned Counsel appearing for all the parties at length and they have assisted me ably in going through relevant provisions of the statute, the Government Circular as well as the other material on record.

7. Before I further deal with the matter, it is necessary to note the context within which the controversy has arisen. There is no dispute that the concerned land is urban surplus vacant land lying with the State Government which it wants to dispose of. The relevant provision of Sec.23 of the Urban Land (Ceiling and Regulations) Act, 1976 reads as follows :-

Disposal of vacant land acquired under the Act:-

(1) It shall be competent for the State Government to allot, by order, in excess of the ceiling limit any vacant land which is deemed to have been acquired by the State Government under this Act or is acquired by the State Government under any other law, to any person for any purpose relating to, or in connection with, any industry or for providing residential accommodation of such type as may be approved by the State Government to the employees of any industry and it shall be lawful for such person to hold such land in excess of the ceiling limit.

Explanation- For the purposes of this section-

(a) Whether any land with a building has been acquired by the State Government under any other law such building has been subsequently demolished by the State Government, then, such land shall be deemed to be vacant land acquired under such other law.

(b) "Industry" means any business, profession, trade, undertaking or manufacture.

(2) In making an order of allotment under sub-section (1), the State Government may impose such conditions as may be specified therein including a condition as to the period within which the industry shall be put in operation or, as the case may be, the residential accommodation shall be provided for:

Provided that if, on a representation made in this behalf by the allottee, the State Government is satisfied that the allottee could not put the industry in operation, or provide the residential accommodation, within the period specified in the order of allotment, for any good and sufficient reason, the State Government may extend such period to such further period or periods as it may deem fit.

(3) Where any condition imposed in an order of allotment is not complied with by the allottee, the State Government shall, after giving an opportunity to the allottee to be heard in the matter, cancel the allotment with effect from the date of the non-compliance of such condition and the land allotted shall revert in the State Government free from all encumbrances.

(4) Subject to the provisions of sub-sections (1), (2) and (3), vacant land deemed to have acquired by the State Government under this Act shall be disposed of by the State Government to subserve the common good on such terms and conditions as the State Government may deem fit to impose.

(5) Notwithstanding anything contained in sub-sections (1) to (4), where the State Government is satisfied that it is necessary to retain or reserve any vacant land, deemed to have been acquired by that Government under this Act, for the benefit of the public, it shall be competent for the State Government to retain or reserve such land for the same.

8. Thus it can be seen from the above section, that the State Government is empowered to allot the excess vacant land appropriately under Sec.23(1) of the Act. Under Sec.23(2), the Government is empowered to impose such conditions as it may deem fit including the condition with respect to the period within which the

residential/industrial (as the case may be) accommodation is to be provided. Sub-sec.(3) empowers the Government to cancel the allotment, if there is any breach of the conditions of the allotment. For our purpose, it is sub-sec (4) which is material. It provides that subject to the aforesaid provision of Sub-secs. (2),(3) and (4) the State Government is required under this sub-section to dispose of the vacant land "to subserve the common good" on such terms and conditions as it may deem fit to impose.

9. The respondent No.1 has issued guide-lines by its resolution dt. 30th May, 1987 of the Revenue Department with respect to the disposal of the lands under the said section. Mr. Sompura, learned Assistant Government Pleader has made a copy of the said resolution available seperately by placing it on record. The same is taken on record by consent and marked as Exhibit 'X-1'. Under clause (2) thereof, the land can be allotted to four different categories with the following equal percentage :-

- (1) Government Departments, Municipal Corporations and Panchayats. 25%
- (2) Urban Poor (EWS), LIG and MIG 25%
- (3) Government housing schemes and slum Clearance Board. 25%
- (4) Land to be developed according to the commercial policy and to be disposed of by public auction. 25%

Clause 3 of the resolution deals specifically with the first category namely Government Departments, Municipal Corporations and Panchayats. Third sub-clause of this clause No.3 provides that the Government employees or the Co-operative Housing Societies formed by them will be included in this category. It further provides that it will be permissible to allot lands to them without auction, though at market price. Clause 10 of this resolution provides for formation of a Committee for each Urban agglomeration for deciding as to how much land, should be allotted for different categories as per percentage, to whom and at what rate. The members of the Committee are as follows:-

- (1) Collector of the concerned Urban Agglomeration -Chairman

(2) Competent Officer and Additional/ Member
Deputy Collector of the concerned Secretary
Agglomeration.

(3) An Officer of the Backward Classes Member
of the concerned Agglomerations.

(4) Representative of concerned Municipal Member
Corporation.

(5) Representative of the concerned Urban Member
Development Authority.

(6) Deputy Town Planner Member

10. The Committee is empowered to invite applications at the District level and to invite offers by an advertisement also wherever necessary. It was supposed to examine the proposals received and then to make appropriate recommendations to the Government. The resolution further provided that with a view to dispose of such application expeditiously, wherever the price of the land (which was to be allotted), was less than Rs.25 Lacs, a Committee was constituted to take the final decision under the Chairmanship of the Secretary of the Finance Department. Clause 11 of the resolution provided that wherever the price of the concerned land was above Rs.25 Lacs, the permission of the cabinet will have to be obtained. Wherever the land was to be allotted at a price less than offset price or whenever any exceptions in the policy were to be made, the decision will have to be taken only after obtaining permission of the Government.

11. The writ petition annexes therewith a copy of the Minutes including recommendations of the District Land Committee of Rajkot held on 30th June, 1992 which is annexed at Annexure A to the petition. The petition also annexes therewith the Minutes of the further Meeting of the District Land Committee held on 5th August, 1992. These Minutes are annexed at Annexure C to the petition. Thereafter some other correspondence is annexed and earlier mentioned affidavit dt. 25/6/1997 made on behalf of the petitioner society showing its willingness to purchase the land at Rs.1,000/- is annexed at Annexure F. Annexure D is petitioner's notice dt. 7th June, 1997 addressed to the Deputy Secretary of the Revenue Department recording therein that petitioner society had initially been recommended for 3300 sq.mts. by the District Land Committee while making the overall

recommendations for 23,924 sq.mts. In first para of that letter, it is recorded that the petitioners have however learnt that the Revenue Department by its decision dt. 31st May 1997 has decided to allot an area of 23,345 sq.mts. from the concerned Survey No. 438 of Rajkot as follows:-

Sr.No. Name of Society Area of land allotted.

1. Shree Vividh Society 13,800 sq.mts.

(Respondent No.3)

2. Shree Tripada Society 42,500 sq.mts.

(Respondent No.4)

3. Shree Ankur Society 5.520 sq.mts.

(Respondent No.5)

Total: 23,345 sq.mts.

It is further stated in that notice that these three societies have been called upon to deposit with the Government within 30 days the following amounts respectively :-

(1) Rs.1,30,000-00

(2) Rs.40,25,000-00.

(3) Rs.55,20,000-00.

Thereafter it is stated in the notice that the aforesaid allotment made by the Government is contrary to the recommendations of the District Committee and it ignores and excludes the petitioner society completely. The notice calls upon the Deputy Secretary to reconsider the allotment orders and not to act thereon in the meanwhile.

12. At the time when this petition was filed, the petitioners were not having the copies of the particular allotment orders issued to the respondent Nos. 3 to 5 societies. They have subsequently been able to get a copy of the order issued to respondent no.5 society dt. 31/5/1997 allotting an area of 5520 sq.mts to it for the price of Rs.55,20,000-00. Mr. Soni has placed that copy on record and the same is taken on record by consent and marked as X.2. He called upon the Government Pleader to produce the orders in favour Respondent Nos. 3 and 4. They have not been produced. The allotment orders in favour of these societies are mentioned in the earlier referred notice dt. 7/6/1997 (Annexure D to the

petition). This notice is also mentioned in Para 6 of the petition. A detailed reply has been filed on behalf of the respondent Nos. 1 and 2, yet there is no specific denial of the averments in Para 6 or Annexure D. On a query from court, Mr. Sompura, AGP. on instructions, accepted that respondent nos. 3 and 4 have also been issued identical orders of allotment dt. 31/5/1997 for the area of land and the price stated in notice dt. 7/6/1997 (At Annexure D to the petition) referred to above. Mr. Vasoya in Para 3 of his reply dt. 17/7/1977 on behalf of Respondent Nos. 3 to 5 has however stated that the amount required from Respondent No.3 was Rs.1,38,000/- (and not Rs.1,30,000/- as claimed by petitioner). Mr.Sompura has produced before the Court the following documents subsequently and they are also taken on record and marked respectively as follows :-

(i) Minutes of the meeting dt. 9/7/1993 X-3.
presided over by the Chief Secretary
fixing the price at Rs.1000/-.

(ii) Tripada Society's (Respondent No.4) X-4
letter dt. 6/2/1976 to Mr. Ashok Bhatt
the then, Revenue Minister.

(iii) Letter by Shri Keshubhai Patel, the X-5
then Chief Minister dt. 24/7/1996 to
Shri Ashok Bhatt.

(iv) Letter dt. 3/10/1996 addressed by X-6
Tripada Society (Respondent No.4) and
also signed by Respondents Nos. 3 and 5
addressed to the Governor of Gujarat
with copy to Secretary Revenue Department

(v) Similar letter dt. 4/11/1996 by the X-7
three societies to the subsequent
Chief Minister Shri Shankarsinh Vaghela.

13. The main submission of Mr. Soni, the learned Counsel appearing for the petitioner was that exclusion of the petitioner society from amongst those to whom the land was finally sought to be allotted, was arbitrary, unjustified and illegal. He submitted that Sec.23(4) of Urban Land (Ceiling and Regulation) Act, 1976 requires the State Government to dispose of the land to "sub-serve the common good". It implied non-discrimination and fair treatment to all. The Government resolution dt. 30th May, 1997 had constituted a high powered committee to make necessary recommendations and unless, there were cogent reasons, the recommendations of the Committee

could not be ignored. Mr.Soni submitted that in the instant case, the petitioner society had applied for the allotment of land as early as on 20/1/1990 initially for 50 members and then on 25/5/1990 for 40 members from Survey No. 440. This is recorded in the Minutes of the District Land Committee held on 30th June, 1992. Those applications were much prior to the applications of Respondents Nos. 3,4 and 5. Since land from Survey No.440 could not be allotted, the petitioner society applied on 19/5/1992 for land from Survey No. 438. This could not be said to be much later than the application of Respondents Nos. 4 and 3 which were made on 15/2/1992 and 18/2/1992 respectively. In any event, it was prior to the application of Respondent No.5 which was made on 15/6/1992. The District Land Committee Meeting held on 30th June, 1992 recommended a parcel of 3000 sq.mts. for 30 members to the petitioner society and similar parcel for 30 members to the Respondent No.4 society. At that time, no recommendation was made in favour of the Respondent No.3 whose application was kept pending. The application of Respondent No.5 was not placed before the Committee at that time. The application of one another society namely Shri Vechanvera Society was also recommended for 9000 sq.mts in that Meeting.

14. It is in the subsequent Meeting of District Land Committee held on 5th August, 1992 that the Respondent No.3 and Respondent No.5 societies came to be recommended for 6675 sq.mts and 1650 sq.mts respectively. Mr. Soni submitted that there is nothing in the affidavit on behalf of the Respondents Nos. 1 and 2 to indicate that there was any error in the recommendations of the District Land Committee for which the recommendations were required to be interfered with or altered.

15. Mr. Soni submitted that petitioner society had also followed up their pending application with the Government. It had written to the Revenue Minister on 4/8/1994 in this behalf and it was informed on 14/11/1994 by the letter of the Additional Collector (Respondent No.2) that its application had been forwarded to the State Government in Revenue Department for its consideration as early as on 3rd August, 1992. That letter is annexed at Annexure B to the petition. The petitioner has annexed two letters dated. 20th January, 1997 and 5th June, 1997 at Annexures F-1 and F-2 respectively to their affidavit-in-rejoinder dt. 31st July, 1997. They make a very interesting reading. These letters are in Gujarati. "Letter dt. 20th January, 1997 addressed to the petitioner refers to the query of the petitioner society concerning public function held by the

then Chief Minister on 18/12/96 at Rajkot. The letter states that with respect to petitioner's request for allotment of land from Survey No. 438 made to the Chief Minister in the Public Contact Programme on 18/12/1996, the same had been forwarded by a letter dt. 27/12/96 to the Land Development Commissioner, Revenue Department, Gandhinagar and that whatever decision is taken by the Government will be informed to the petitioner. The subsequent letter dt. 5/6/1997 is a copy of the letter of the Section Officer of the Revenue Department addressed to the Respondent No.2. That is in reply to the letter of the Respondent No.2 dt. 27/12/1996 referred to above by which the Section Officer sought information as to how much is the total area of Survey No. 438, This query is made in view of the request of the petitioner society for allotment of land from that survey number. That appears to be an internal communication of the Respondents Nos. 1 and 2 but the correctness thereof is neither denied by the Respondent Nos. 1 and 2, nor its production is challenged.

16. The recommendation of the District Land Committee in favour of the petitioner and Respondents Nos. 3,4 and 5 were pending with the Respondents Nos. 1 and 2 since June/August, 1992. The petitioner society came to know about the decision of Respondents Nos. 1 and 2 in favour of the Respondents Nos. 3,4 and 5 dt. 31st May, 1997 only in the first week of June, 1997. Thereupon it addressed a notice to the Respondent No.1 on 7/6/1997 which is at Annexure D to the petition, as stated earlier. It requested similar treatment and allotment to itself and filed an affidavit before the Government on 25th June, 1997 accepting the rate of Rs.1,000/- per sq.mt. Mr.Soni submitted that the petitioner society was kept completely in dark with respect to the understanding being arrived at in favour of Respondents Nos. 3 to 5. He submitted that if the Respondents Nos. 3 to 5 were accepting particular piece of land at Rs.1,000/- per sq.mt. the minimum that was expected of the Respondents Nos. 1 and 2 was to revert back to the petitioner and inform it that the Respondents Nos. 3 to 5 were agreeable to the purchase the very land at Rs.1,000/- per sq.mts and in case, the petitioner was not willing to accept that price, the recommendation in its favour by the District Committee would stand cancelled. Mr. Soni submitted that the decision was arrived at surrepticiously and was malafide.

17. Mr. A.J.Patel, learned Senior Counsel appearing for the Respondents Nos. 2 and 3 submitted that all what Sec.23(4) of the Act required, was to dispose of the

urban vacant land 'to sub-serve the common good'. He submitted that the District Committee constituted under the Resolution dt. 30th May, 1987 was at the highest a Recommending Body and nothing further could be inferred from its recommendations. He submitted that the Respondents Nos. 3 to 5 were continuously following up the matter with the Government. He submitted that at one time, the Government had decided to dispose of the very land by public auction. The respondents Nos. 3 to 5 societies were interested in the lands being allotted at Rs.550/- per sq.mt. only, but as stated in Para 5 of the further affidavit-in-reply of Mr. Vasoya dt. 28/7/1997

" in the meanwhile, the prices of the lands in Rajkot were going up, and therefore, the Respondents Nos. 3,4 and 5 relented their stand. They joined together and decided to offer the price at the rate of Rs.1,000/- per sq.mt. to the Government, and thereafter, made a joint application afresh to the Government on 16/5/1997.

A copy of that application is annexed at Annexure I to that affidavit. He submitted that in these circumstances, if the Government decided to allot the concerned land to the Respondents Nos. 3 to 5, there was nothing erroneous and it could not be said that the decision was not one sub-serving the common good. He submitted that the Respondents Nos. 3 to 5 were also the societies of Class III and Class IV employees, and in pursuance to the allotments, they had deposited quite a substantial amount with the Government. It is stated in Para 3 of the affidavit-in-reply of Mr. Vasoya dt. 17/7/1997, that the

" Respondents Nos. 3 to 5 societies cannot have any objection, if the petitioner society is also allotted some other land by the Respondent-State. But so far as the land which is already allotted to Respondents Nos. 3 to 5 is concerned, the petitioner society cannot make any grievance against the allotment of the said land to respondents Nos. 3 to 5 societies. The petitioner society has no locus standi to challenge the action on the part of the respondent State in allotting land to the concerned respondents".

There is one more submission of Mr. Patel which has got

to be noted. In Para 2 of the further-affidavit-in-reply of Mr. Vasoya dt. 28/7/1997, it is stated that

"at that time, all the societies had agreed to pay the price at the rate of Rs.550/- per sq.mt. to the Government, but the Government did not accept the said offer of the societies, and, therefore, the applications of all the said societies stood rejected. In that view of the matter, the question of making application for allotment by any society in earlier point of time or subsequently did not arise at all, because the entire chapter of allotment of land to those societies stood closed some time in 1992 on the rejection of all the application ".

It is further stated by Mr. Vasoya in that affidavit that it was in the Lok Darbar held some time in 1992 in Rajkot in which Honourable the then Revenue Minister Shri Ashok Bhatt had remained present, that it was declared that all the earlier applications would not be considered; and that the land would be disposed of by a public auction. It is stated in Para 4 of this affidavit that thereafter, the respondents Nos. 3 to 5 gathered and decided in May, 1997 to accept the price of Rs.1,000/- per sq.mts which came to be entertained by the State Government.

18. In this connection, it is material to note that at the end of Para 5 of the affidavit-in-reply of Mr. H.J.Shah, on behalf of the State Government, it is stated that-

"in the meanwhile, the Government decided to grant the land by auctioning the same in public. This was informed to the societies by the Govt. during the meeting " FARIYAD TUMARI DAD AMARI " held on 24/2/1996 at Rajkot pursuant to the representation made by the societies accordingly, the applicant societies were informed orally but all the societies demanded the land only at the original price of Rs.550/- per sq.mt. Therefore, applications of the societies could not be granted at the price of Rs.550/per sq.mt. as claimed by the said societies. In that view of the matter, the said chapter came to an end ".

Mr.Sompura for the State submitted that the lateron the respondents Nos. 3 to 5 had agreed to accept the price of Rs.1,000/per sq.mt., and therefore, they were allotted the land. This affidavit does not say anything about, Minister Mr. Ashok Bhatt declaring in 1992 in Rajkot in

Lok Darbar that the earlier applications would not be considered and the land would be auctioned.

19. As stated above, the respondents Nos. 3 to 5 have stated in their reply that they had no objection, if some other land is allotted to the petitioners. The petitioners were also ready to accept an appropriate parcel of land, if offered in a similar locality. Hence an attempt was made to explore that possibility but Mr. Sompura, learned AGP, on instructions, stated that he was not in a position to make any statement as to whether any similarly situated parcel of land could be made available to the petitioner society. An attempt was also made to explore the possibility of accommodating the petitioner society provided a proper approach was shown by the respondents Nos. 3 to 5. That could have been done, if the respondents Nos. 3 to 5 were agreeable on their own to restrict either to the area that was recommended to them earlier by the District Committee or by reducing the size of each tenements from 115 sq. to 100 sq.mts. I must record that Mr. Patel, the learned Senior Counsel appearing on their behalf as well as Mr. Soni made sufficient efforts but because of the difficulties which are always inherent in such an exercise. Mr. Patel could not succeed in persuading his clients. All these methods would also have required the consent of the Government. Mr. Sompura was also unable to make any statement in this behalf, since the impugned orders were passed after a Cabinet decision and for the approval of any arrangement, it would be necessary to go back again to the Cabinet. In any case, such an occasion did not arise inasmuch no understanding could be arrived at between the petitioners on the one hand, and the respondents Nos. 3 to 5 on the other. These efforts were made only because all the societies concerned are of employees of the State Government from a middle and lower income group, and all are in need of accommodation. The matter was adjourned from time to time for exploring this possibility also, but that could not be.

20. Now, while reverting to the submissions of the contesting parties, I would first like to deal with two technical submissions raised by Mr. Patel. He firstly submitted that the petition was bad for laches, inasmuch as the respondents had made their payments by 24th June, 1997, whereas the petition came to be filed thereafter i.e. on 16th July, 1997. He submitted that in the meanwhile, rights had to be crystalised in favour of respondents nos. 3 to 5. The second submission of Mr. Patel was that the petitioners had no locus standi. It was a matter between the Government and the respondent

societies. The respondents nos. 3 to 5 societies had no objections, if any other land was allotted to the petitioner society, but the petitioner society can have no grievance against allotment to the respondent societies. It is not possible to accept these submissions. The petitioners were informed as recently as on 20th January, 1997 (At Annexure F/1) that their representation with respect to the query addressed to the Chief Minister had been forwarded to the Revenue Department on 27/12/1996. That is followed by a departmental communication dated 5/6/1997 (Exh.F-2). There is no communication whatsoever to the petitioner that any negotiations were held with the respondents nos. 3 to 5. As stated above, the acceptance by the Respondents Nos. 3 to 5 of the rate of Rs.1,000/- per sq.mt. is communicated to the Government on 16/5/1997 as stated in Para 4 of Mr. Vasoya's further affidavit in reply dt. 28/7/1997. The Government's decision to allot the land is dated 31/5/1997. The petitioners have addressed a notice to the Revenue Secretary on 7/6/97 informing that their claim is pending and requesting in last para thereof that until their claim was considered, no money be received from the Respondents Nos. 3 to 5 societies. The Respondents Nos. 3 to 5 claim to have paid the amounts on 24th June, 1997, whereas the petitioner society made affidavit on 25/6/1997 conveying its acceptance to purchase the land at Rs.1,000/per sq.mt. and since there was no proper response, the petition was filed on 16/7/1997. In view of these facts, it cannot be said that there was any delay or laches, nor could it be said that the petitioner society has no locus standi. The very fact that the petitioner society was in picture right from the recommendation made by the District Land Committee clearly goes to establish its locus and interest in the matter.

21. It is submitted by Mr. Patel and Mr. Sompura that initially all the societies were asking for the allotment of the land at Rs.550/- per sq.mt. and in fact, the application of respondent no.4 society was being entertained earlier at that rate. In Para 4 of Mr.Shah's affidavit, it is stated that

"Accordingly, the first applicant Tripada Society was handed over the land as recommended at the price of Rs.550/- per sq.mts. However, in the meanwhile, it came to the notice of the Govt. that the price of the land which was handed over was much less than the prevailing market price. Therefore, on asking the Deputy Town Planner to

inform the real market price, he informed that the real market price as on 28/8/1992 was between Rs.850/- to Rs.1,000/- depending upon the location of the land. On coming to know that the society is demanding land at a very less rate than the prevailing market price, the said offer came to be cancelled on 15.2.1993 by the Government".

The affidavit further states 'all the applications were kept pending till final decision of the market price'. The Government appointed a Committee headed by Chief Secretary to decide the market price. The said Committee came to the conclusion that the market price of the land in question should be Rs.1,000/- per sq.mt. Then it is stated,-

" Accordingly, Tripada Society was again handed over by letter dt. 16/8/93, the land at Rs.1,000/- per sq.mts. However, the said society did not accept the said offer at Rs.1,000/but wanted the land at the original rate of Rs.550/only, hence the said offer was also cancelled. Intimation was sent to Tripada society on 29/4/1994.

Thereafter the affidavit says that in the meanwhile the Government decided to grant the land by auctioning the same in public. Then there is a reference to the Meeting " FARIYAD TUMARTI DAD AMARI" held on 24/2/1996 at Rajkot. It is further stated in the affidavit that since the Societies demanded the land at the original price of Rs.550/- only, the said chapter came to an end.

22. It is, however, relevant to note that whereas the Committee under the Chief Secretary, decided the price of the land at Rs.1,000/- per sq.mt. on 9/7/1993 (as per Ex. X-3) only Tripada Society (Respondent No.4) was informed accordingly. This is accepted in earlier part of Para 5 of the affidavit, which reads as follows -

"It is submitted that the Govt. in Revenue Department has decided to grant the land bearing Survey No. 438 of city of Rajkot only at the prevailing market price. Accordingly, the Government asked the Competent Authority, Rajkot to inquire from the society as to whether the societies whose applications are pending from survey No. 438, are still willing to accept the land at the prevailing market price or not, by letters dated 13/3/1995, 22/8/95 and 22/7/96. But the Competent Authority, Rajkot could not communicate it to any of the said societies whose

demands were pending because of the Review Application pending till 24/10/96".

Thus there was no intimation to the petitioner Society. The decision of the Government to auction the land is reported to be informed to the societies 'orally' in the "FARIYAD TUMARI DAD AMARI" programme of 24/2/1996 at Rajkot, but no Minutes thereof are produced to know as to which Societies were present therein.

22. In para 6 of his affidavit, Mr. Shah has stated that the new Chapter opened as follows :

"It is submitted that Tripada society, Vividh Soceity and Ankur Society jointly made application on 6.8.1996 demanding the very said land bearing survey No. 438 of city of Rajkot and offered price of Rs.1,000/- per sq.mt. for the same land. Thereafter, again another application was made on 3.10.1996 and again another reminder was also made by the said societies on 4.11.96 ".

Now what is material to note is that these averments have come in the reply of the Deputy Secretary affirmed on 30th July, 1997. The respondents nos.3 to 5 societies have themselves filed two affidavits prior thereto on 17/7/1997 and a third one was filed on 28/7/1997. In none of the three affidavits, there is any such averments that they had sought the land at the price of Rs.1,000/per sq.mt. through the applications as stated above by Mr. Shah. In fact in Para 4 of the affidavit of Mr. Vasoya dt. 28/7/1997, it is categorically stated that ' in the meanwhile, the prices of the lands in Rajkot were going up, and, therefore, the respondents Nos. 3,4 and 5 relanted their stand' and made joint application on 16/5/1997 for purchasing the land at the rate of Rs.1,000/- per sq.mts. Three letters referred in the above affidavit are in Gujarati and fortunately are on record at Annexures X-4, X-6 and X-7. The letter dt. 6/8/1996 is of Tripada society only and not by the other two. This is the society for whom there is a reference in the affidavit-in-reply of Mr. Shah. This letter does state in Para 3 that their request at the rate of Rs.1,000/- may be considered. The second letter dt. 3/10/1996 is by the three societies and inthe para after Para No.15, it does state that being fed up of the political aspects of the matter, they have expressed their willingness to purchase the land at the rate of Rs.1,000/- per sq.mt. However, as against that, in the third letter dt. 4/11/1996 again sent by three societies, there is a reference in Para 15 thereof that in Gandhinagar, land has been given at the rate of

Rs.100/per sq.mt. and in Para 9, in terms it states

" after the report of the Committee, the Government has asked the Tripada society to take the land at Rs.1,000/per sq.mt., but no explanation is provided with respect to our reasonable demand of allotting land at Rs.550/per sq.mt. which we are still maintaining ".

It is strange that when the Respondents Nos. 3 to 5 have not chosen to refer to these letters, in their earlier three affidavits, the Government has chosen to state that they had applied and had offered the price of Rs.1,000/on 6/8/1996 and that another application was made on 3/10/1996 with a reminder dt. 4/11/1996. This is nothing but a case of "suggestio falsi ." In view of the contents of the last letter dt. 4/11/1996, it cannot be said that there was any pending acceptance of these three societies as on that date for purchasing the land at Rs.1,000/- per sq.mts.

24. Thus it is clear that the respondents nos. 3 to 5 societies for the first time showed their unequivocal willingness to accept the land at Rs.1,000/- per sq.mt. on 16/5/1997 which is also their case. That letter makes an interesting reading. It is addressed to the Section Officer. It is in Gujarati. The ninth line of that letter when translated in English reads as follows :-

" The Hon'ble Chief Minister has informed us societies that land will be allotted at the rate of Rs.1,000/-per sq.mts and in that context, we are ready to pay market price".

Later on this letter further states that-

"respondent no.3 Vividh Society (respondent No.3) be allotted 13,800 sq.mts. for 120 members, Tripada Society (respondent No.4) be allotted 4025 sq.mts. for 35 members and Ankur Society (respondent No.5) be allotted 5520 sq.mts for 48 members."

The affidavit of Mr. Shah, Deputy Secretary, Revenue Department, conveniently does not refer to this letter, though it refers to earlier letters dt. 6/8/1996, 3/10/1996 and 4/11/1996. Thereafter, it states that as nothing was done by the Government, the delegation of Class III and Class IV represented before the Hon'ble Minister as well as Chief Minister. ' Accordingly the Government in its Cabinet meeting held on 21/5/1997

decided to grant the land to the said societies, being Respondents Nos. 3 to 5 at the price of Rs.1,000/- per sq.mt. looking to the difficulties and strains under which the Class III and Class IV employees have passed through for getting the said land for their residential purpose".

25. Thus, it is material to note that the respondents Nos. 3 to 5 not only represented on 16/5/1997 to grant the land at Rs.1,000/- per sq.mt. but they also pointed out as to how much land should be given to each of them. That representation was straight way accepted in the Cabinet meeting on 21/5/1997 in toto. Nothing is stated in the affidavit of Mr. Shah as to why the petitioner society was not asked in any way as to whether they were still ready to accept the prevailing market price. As far as the earlier non-communication is concerned, in the years 1995-96, as seen earlier, the Dy. Secretary has tried to explain its way by saying that Government had written letter to Competent Authority to inform the Societies as to whether they were ready to pay Market price, but the Competent Authority did not communicate with the Societies. What is material is that when final negotiations have taken place in May, 1997 or there about, they have taken place keeping the petitioner completely in dark. The question is whether this course of action is permissible to a State Government while disposing of the land under Sec.23(4) of the Act.

26. It is also relevant to note that whereas in the recommendations of the District Land Committee, one Vechanvera Society was recommended for 9000 sq.mts. that recommendation also stands ignored. In this connection, on a query from the Court, it was stated that some other land has been allotted to that society but nothing is stated on oath, nor is any communication to and from that society is brought to my notice that either the claim of that society is satisfied in any way or is otherwise rejected.

27. It has been canvassed by the respondent societies as well as by the Government that all the societies were until the last asking for allotment of the land at the rate of Rs.550/per sq.mts., but the Government did not accept that offer as it was not ready to allot the land for the price less than Rs.1,000/- per sq.mts. The words of Mr. Vasoya, as he stated in Para 2 of his further affidavit dt. 28/7/1997 which read as follows:

" therefore the applications of all the societies

stood rejected. In that view of the matter, the question of making application for allotment by any society in earlier point of time or subsequently did not arise at all, because entire chapter closed some time in 1992 on the rejection of all the applications".

The Government has also taken the same stand and in Para 5 of the affidavit of Mr. Shah, Deputy Secretary, Revenue Department, dt. 30th July, 1997, he states that-

"all the societies demanded the land only at the original price of Rs.550/- per sq.mt. Therefore, applications of the societies could not be granted at the price of Rs.550/- per sq.mt. as claimed by the said societies. In that view of the matter, the said chapter came to an end.

In the submission of Mr. Shah, new Chapter is supposed to have begun with the joint application of the three societies dt. 6/8/1996 which even the societies have not said. As seen above, the letter dt. 6/8/1996 is firstly not a joint letter of the societies. This letter was written by only one society namely Tripada which is respondent no.4 herein. The subsequent letter dt. 3/10/1996 is written by three societies and it does say that "being fed-up of the political aspect of the controversy, they were accepting the price of Rs.1,000/per sq.mt." but in the third letter dt. 4/11/1996 written by the three societies, in Para 9 thereof, they stated that the Government was not giving any explanation with respect to their reasonable request to allot the land at Rs.550/- per sq.mt. which they were maintaining. The respondent societies have not referred to these three letters in their affidavit and as stated earlier, Mr. Vasoya in Para 4 of his affidavit, has stated that it was on 16/5/1997 that the societies made a joint application afresh. Thus, if it is a case of the respondents that it is a new Chapter, it is obvious that it has begun on 16/5/1997 and has ended in their favour in its entirety as requested by them on 21/5/1997 in the Cabinet Meeting. But this story of it being new Chapter is belied by the allotment order dt. 31/5/1997 (Exhibit X-2) issued to the respondent no.5 society which specifically states that it is with respect to their application dt. 20th June, 1992 that the Government had decided to allot the land of 5520 sq.mt. to that society. This cannot be said to be a new case since the reference is to a much earlier pending application.

28. However, whether it is an old Chapter or a new one, in either case, it does not help the respondents. Even if this is considered as a new Chapter, the Government could not take the decision on its own to allot the entire land to three societies approaching to it. If it is a new Chapter, it was necessary for the Government to refer the matter again to the District Land Committee constituted under the Resolution dt. 30th May, 1997 to seek its recommendations. This is because in that event, it was a new application of 16/5/1997 requesting for much larger parcels of land. If it was not a new application, it was necessary to find out as to whether there were any other interested Societies. That was to be done by the District Land Committee as per Clause (10) of the Resolution, either by inviting applications or by public advertisement. By the impugned decision, the Government was choosing all the three societies at its own level and granting them entire land as sought by them, without any reference to the recommendations of the District Land Committee. Thus, the two societies in whose favour the recommendations were already made, (viz. petitioner & Vechanvera Society) were kept out of negotiations and their legitimate expectations were defeated. In Para 4 of the affidavit-in-rejoinder of Mr. Arya, the President of the Societies dt. 31st July, 1997, there is specific allegation in this behalf which reads as follows:-

" In fact the fact that all these 3 societies could join hands and approach the Hon'ble Chief Minister speaks volumes about surreptitious way of getting land keeping apart the petitioner society. From the averments made in further affidavit of the respondents nos. 3 to 5 society, it clearly appears that State Government had never gone to these societies to offer land at Rs.1,000/- per sq.mt. but these societies themselves have gone to Hon'ble Chief Minister and could get their demand passed through. Thus, decision of State Government dated 31/5/97 asking the respondents nos. 3 to 5 societies to deposit the amount was on the basis of negotiation with the Hon'ble Chief Minister and not on the basis of earlier offer to these societies. Unfortunately, neither the petitioner society was offered land at the rate of Rs.1,000/- per sq.mt. nor was kept present with respondents nos. 3 to 5 societies while taking decision to offer land at the rate of Rs.1,000/- per sq.mt ".

There is no denial to these allegations.

29. Mr. Patel, the learned Counsel appearing for the respondents Nos. 3 to 5 submitted that all that Government was required to do was to see to it that the disposal of land by the Government was "to sub-serve the common good" as provided in Sec.23(4) of the Act. Mr. Patel submitted that the District Land Committee appointed by the State Government under its Resolution laying down the guide-lines in this behalf was merely a recommending body and its recommendations cannot be emphasized beyond a limit. He submitted that the respondents Nos. 3 to 5 are the societies of Government employees and they were being allotted the concerned land at market price. Hence there was no reason to interfere with the decision of the Government in this behalf. He relied upon the observations of the Hon'ble Supreme Court in Paras 101 and 102 of the judgment in LIC of India Vs. Escorts Limited, reported in AIR 1986 SC 1370, wherein the Hon'ble Supreme Court has observed as follows :-

In Para 101, the Hon'ble Supreme Court observed as follows -

....." While we do not for a moment doubt that every action of the State or an instrumentality of the State must be informed by reason and that in appropriate cases actions uninformed by reason may be questioned as arbitrary in proceedings under Art. 226 or Art. 32 of the Constitution, we do not construe Art. 14 as a charter for judicial review of State actions and to call upon the State to account for its actions in its manifold activities by stating reasons for such actions ".

In Para 102, it is observed as follows :-

".....If the action of the State is related to contractual obligation or obligations arising out of the tort, the Court may not ordinarily examine it unless the action has some public law character attached to it.

There can be no two views on the above propositions, but they do not help the respondents in the present case. The allotment of land by the State acquired by it under the Urban Land (Ceiling and Regulation) Act, has to be done to sub-serve the common good. It is, therefore, axiomatic that such a decision to allot the land must be

governed by reason and fair play. The allotment of the land by the State is an executive act. It is not a matter of policy decision. When the State itself has framed the guidelines by passing a resolution, it is implied that those guidelines are meant to be observed. If a society applies for allotment of land in pursuance to the guidelines, is considered eligible and recommended by the Competent Committee, the recommendations create legitimate expectations in the minds of the members of the society. When their representation is kept pending what is minimum expected of the State is that they ought to be informed as to what is happening on their application. If there are more than requisite applications and if an appropriate price is to be obtained, all are entitled to participate in the negotiations.

30. That the Government is not free to select recipients for its largess is well settled by judicial pronouncements. In *M/s Erusian Equipment and Chemical Ltd. Vs. State of West Bengal*, AIR 1975 SC 266, the Hon'ble Supreme Court was concerned with the decision of the respondent Government black-listing the petitioner from bidding from contract when but for black-listing, the petitioner would have been entitled to participate in the bid. The argument canvassed on behalf of the respondents were recorded by the Hon'ble Supreme Court in Para 11 of that judgment which reads as follows :-

" The Solicitor General on behalf of the appellant in Civil Appeal No. 318 of 1974 made these submissions. The Government could choose any person for entering into a contract. Further, the State could insist on dealing with persons in whom the State had trust for integrity. The sales were not under a statute. Black-listing is an internal and confidential step. Rights under Articles 14, 19 and 21 do not extend to the compelling of any third party including the Government to negotiate or enter into a contract. The duty to act fairly may include in many cases duty to act judicially and those would be cases where there is existing vested rights. The duty to act fairly would not always mean a duty to hear the party affected. Whereas public black-listing is not confidential, departmental black-listing will be a confidential matter. If natural justice does not come into play in rejecting a bid, natural justice does not operate at the time of entering into contract ".

Having considered this submission on behalf of the respondent, what Hon'ble Supreme Court has held in Para 12 of that judgment is as follows :-

" Under Article 298 of the Constitution, the Executive power of the Union and the State shall extend to the carrying on of any trade and to the acquisition, holding and disposal of property and the making of contracts for any purpose. The State can carry on executive function by making a law or without making a law. The exercise of such powers and functions in trade by the State is subject to Part III of the Constitution. Article 14 speaks of equality before the law and equal protection of the laws. Equality of opportunity should apply to matters of public contracts. The State has the right to trade. The State has there the duty to observe equality. An ordinary individual can choose not to deal with any person. The Government cannot choose to exclude persons by discrimination. The order of black-listing has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who is on the approved list is unable to enter into advantageous relations with the Government because of the order of black-listing. A person who has been dealing with the Government in the matter of sale and purchase of materials has a legitimate interest or expectation. When the State acts to the prejudice of a person it has to be supported by legality ".

31. Thus as held by the Hon'ble Supreme Court, executive function of the State Government to acquire or dispose of any property can be carried on either by making a law or without making a law but exercise of such power and function has to be subject to part III of the Constitution which includes Article 14 which provides for equality of opportunity. Subsequently, in Ramana Dayaram Shetty Vs. The International Airport Authority of India, reported in AIR 1979 SC 1628, the Hon'ble Supreme Court in Para 12 while agreeing with the observations of Mathew, J. in V. Punnam Thomas Vs. State of Kerala, reported in AIR 1989 Kerala, 81, quoted the same with approval as follows :-

"The Government, is not and should not be as free as an individual in selecting the recipients for

its largess. Whatever its activity, the Government is still the Government and will be subject to restraints, inherent in its position in a democratic society. A democratic Government cannot lay down arbitrary and capricious standards for the choice of persons with whom alone it will deal ".

32 In that Paragraph, the Hon'ble Supreme Court referred to the approval of the above referred decision of AIR 1975 SC 266 and observed as follows :-

" The power or discretion of the Government in the matter of grant of largess including award of jobs, contracts quotas, licences etc. must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory ".

The same approach is again reflected in the approach of the Hon'ble Supreme Court in the case of Shri Sachidanand Pandey Vs. State of West Bengal, reported in AIR 1987 SC 1109,, wherein after considering all relevant judgments, the Hon'ble Supreme Court observed in Para 39 as follows:

" On a consideration of the relevant cases cited at the bar the following propositions may be taken as well established: State-owned or public-owned property is not to be dealt with at the absolute discretion of the executive. Certain precepts and principles have to be observed. Public interest is the paramount consideration. One of the methods of securing the public interest, when it is considered necessary to dispose of a property, is to sell the property by public interest, when it is considered necessary to dispose of a property is to sell the property by public auction or by inviting tenders. Though that is the ordinary rule, it is not an invariable rule. There may be situations where there are compelling reasons necessitating departure from the rule but then

the reasons for the departure must be rational and should not be suggestive of discrimination. Appearance of public justice is an important as doing justice. Nothing should be done which gives an appearance of bias, jobbery or nepotism".

The same approach is further reflected in the case of Haji T.M.Hassan Vs. Kerala Financial Corporation, AIR 1988 SC 157.

Thus, it is well settled that the State Government can not discriminate while discharging its executive functions and its decision in its entirety must conform to reason and fair play.

33. Mr.Soni, the learned Counsel appearing for the petitioner society led great stress on the facts of the judgment of the Hon'ble Supreme Court in the case of Sriniketan Co-operative Group Housing Society Vs. Vikas Vihar Co-operative Group Housing Society, reported in AIR 1989 SC 1673. The facts of that case were almost similar to the facts of the present case. In that matter, the concerned Housing Societies were claiming allotment of Government land. List of eligible societies was prepared by Registrar of Co-operative Housing Societies for the decision of the concerned authority namely the Delhi Development Authority, but that list was interfered with by the Central Government, Ministry of Urban Development on the basis of a new criterion namely "First Come First Served ". That criterion was also not followed uniformly and the Hon'ble Supreme Court observed in Para 24 of that judgment as follows :-

" On a careful consideration of the matter, we find that even if the contentions of the learned counsel for the affected societies are accepted. viz. that norms and guidelines for allotment of land had been prescribed, that those norms had been conformed to when land was allotted to the nine Societies, that the allotment of land was for a public purpose and that land had not been offered at a throw away price but at a rate three and a half times more than in other areas after obtaining the views of the Financial Adviser and the Finance Ministry, there are other factors which stand in the way of accepting their further contention that the allotment of land had been done in a fair and just manner and there are no grounds for quashing the allotment order on the ground of arbitrariness or discrimination ".

Thereafter, the Hon'ble Supreme Court in Paras 26 and 28 of that judgement observed as follows :-

Para 26 :

" This argument cannot advance the case of the allottee societies in any manner because of two reasons. In that first place, the allotment of land was not done by the D.D.A. but by the Ministry of Urban Development. It cannot, therefore, be said that the formula contained in the rules pertaining to allotment of land by D.D.A. should have put the societies on notice that the same rule would be followed by the Ministry of Urban Development also in selecting societies for allotment of land. The second reason is that the Government of India has not taken this stand in the counter-affidavit filed by it. On the other hand, the Government of India had candidly admitted in the counter-affidavit that the criterion of "first come first served " evolved on 5th March, 1984 had not been made known to all the societies. It, therefore, follows that the allotment of land to the nine Co-operative Societies had been made without putting all the societies on notice as to what would be the basis on which their applications would be considered. "

Para 28 :

"Another factor worthy of note is that even in the application of the norm 'first come first served', the Government had not followed a uniform policy. The High Court has pointed out that initially five societies were selected for allotment of land on the basis of 'first come first served', but subsequently one of the societies was dropped out and there is no explanation for the said society being dropped out. In addition the High Court has commented on the fact that when the Registrar had sent a list containing the names of 15 societies, the Ministry had selected only four societies for allotment of land and rejected the applications of the other societies. No explanation is forthcoming for not allotting land to those societies.

As the norm of 'first come first served ' had not been followed in the case of all the applicant societies, the Government of India had to concede in the counter-affidavit filed by Shri A.K.Goyal that the principle 'first come first served' was not universally applied to all the societies which had been allotted land. Since all the eligible societies were not treated alike and allotted land, the High Court has held that the allotment of land had been done in an arbitrary manner. This finding cannot be said to be wrong."

Thus, the norms of 'first come first served' were not been followed as an uniform policy and in Para 27, it has been noted that it was never made known to the applicant societies that the allotment of land would be done by the Ministry itself. In view of these facts, the Hon'ble Supreme Court interfered with the allotments and set them aside and directed refund of the amounts with interest.

34. There is one another aspect of this matter which has got to be dealt with namely the legitimate expectations of the citizens. The doctrine is lucidly elaborated by the Hon'ble Supreme Court in Food Corporation of India Vs. Kamdhenu Cattle Food Industries (AIR 1993 SC 1601). In that matter, the last date upto which the offers made in the tender was to remain open was 17/7/1992. After opening the tenders on 18-5-92, the appellant decided to negotiate with all the tenderers on 9/6/1992, when significantly higher amount was offered over, the amounts quoted in the highest tender. Ultimately, highest tender was superseded only by significantly higher rate arrived at during negotiations with all tenderers giving to all an opportunity to compete by revising their bids. The Hon'ble Supreme Court held that the highest bid was obtained by an auction which satisfied the requirements of non-arbitrariness. The Hon'ble Supreme Court, in Para 10 of the judgment in AIR 1993 SC 1601 observed as follows :-

"The object of inviting tenders for disposal of a commodity sale procure the highest price while giving equal opportunity to all the intending bidders to compete. Procuring the highest price for the commodity is undoubtedly in public interest since the amount so collected goes to the public fund. Accordingly, inadequacy of the price offered in the highest tender would be a

cogent ground for negotiating with the tenderers giving them equal opportunity to revise their bids with a view to obtain the highest available price ".

The basis of the above approach is legitimate expectations of every citizen. The observation made in Para 7 of that judgment by the Hon'ble Supreme Court (per Verma J. as he then was) read as follows :-

"In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Art. 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law : A public authority possesses powers only to use them for public good. This imposes the duty to act fairly and to adopt a procedure which is 'fairplay in action '. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision-making process in all State actions. To satisfy this requirement of non-arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bonafides of the decision in a given case ".

35. In the facts of the present case, it is accepted in the affidavit of the State Government that all the societies were not asked as to whether they were willing to accept the land at the market price. It also becomes clear that the respondents nos. 1 and 2 have lastly moved into the matter due to letter of the respondents nos. 3 to 5 dt. 16/5/1997 and after negotiations with them only, a Cabinet decision has been taken on 21st May, 1997 to allot the concerned lands to respondents nos. 3 to 5. The petitioner society had its legitimate expectations that it will be informed as to what is happening on its application. The petitioner society was not included in negotiations when the respondents nos. 3 to 5 agreed to pay Rs.1,000/- per sq.mt. as the price of

the land. Thus the petitioner society did not have equal opportunity to revise its bid. The decision of the respondent No.1 arrived in such a manner cannot be said to "sub-serve the common good", and will, therefore, have to be interfered with.

36. Then comes the question as to what should be the next course of action. At one point of time, Mr. Soni, the learned Counsel appearing for the petitioner society submitted that the allotment in favour of the respondents nos. 3 to 5 be cancelled in its entirety; the amounts paid by them be refunded to them, and the matter may be directed to reconsider by the District Committee. This submission was made on the lines of the operative order of the Hon'ble Supreme Court in the case of Shriniketan's case (supra). That was the case where a large number of societies were involved and there were allegations that those societies which were formed by the Members of Parliament, were being favoured. In the instant case, the petitioner society, as also the respondents nos. 3 to 5 societies and another recommended society (which is not before this Court namely Vechanvera Co-operative Housing Society) are all Housing Societies of Government employees, consisting of members from Class III and Class IV. The basis of the claim of the petitioner society is in the recommendations of the District Committee and the respondents nos. 3 to 5 are also being covered under those recommendations. The fact, however remains that in the decision of the State Government, the petitioner and Vechanvera Society are completely eliminated, and lands which were recommended for them are now allotted to the respondents nos. 3 to 5 societies. As can be seen from the allotment order issued to the respondents no.5, it is with reference to their application made in June, 1992. Thus, it is the earlier pending application which has culminated into allotment. Mr. Patel, the learned counsel appearing for the respondents nos. 3 to 5 therefore, submitted that in the event this court finds anything erroneous in the decision of the Government, the allotment be protected to the extent which it could be. It is on this basis that if there is any error, it is in allotment of land which is in excess over what was initially recommended by the District Land Committee in favour of the respondents nos. 3 to 5 societies. In fact, that is a way whereby the interest of the petitioner society can also be safe-guarded.

37. The petitioner society has shown its readiness to pay the price at the rate of Rs.1,000/- per sq.mt. The respondents nos. 3 to 5 societies have already deposited the amount at that rate. In the circumstances, in my

view, it would be proper that the allotment in favour of the respondents nos. 3 to 5 ought to be interfered to the extent to which it is in excess of the recommendations initially made by the District Committee. The allotment order issued to them will have to be interfered, and modified to that extent. That will leave more than sufficient space to the petitioner society. The basis of its claim is also the recommendations of the District Land Committee, and hence it should be and will be allotted land as per the recommendations of the District Land Committee. Nothing has been stated in the affidavit filed on behalf of the State Government with respect to Vechanvera Society, though it was stated by Mr. Sompura, the learned AGP across the Bar, on instructions, that Vechanvera Society does not appear to be interested as its claim has been satisfied by allotting some other land. That society is not before this Court, nor is there any document concerning that society produced before the Court pointing out that the recommendation in its favour made by the District Land Committee would no longer survive for any particular reason. In the facts and circumstances of the case, the land which was originally allotted to Vechanvera Society will have to be kept intact, until proper decision after due notice is taken holding that the claim of that society no longer survives.

38. In the circumstances, the petition will have to be allowed and is hereby allowed with the following directions :

- (i) The impugned order of allotment dt. 31/5/1997 in favour of the respondents no.5 and similar order in favour of Respondent No.3 and 4 are hereby interfered and set aside.
- (ii) The respondent no.1 is directed to issue fresh orders of allotment within four weeks from the receipt of writ to the petitioner society and the respondents nos. 3,4 and 5 societies for the area and members as recommended by the District Land Committee, Rajkot viz. 3300 sq. mts. for 30 members to the petitioner society, 6675 sq.mts. for 60 61 members to the respondent no.3 society, 3300 sq.mts. for 35 members to the respondent no.4, and 1650 sq.mts. of land for 15 members to the respondent no.5 society.
- (iii) Rest of the land will remain with the Government.
The respondent no.1 is directed to inform the Vechanvera Society about this decision and to

find out as to whether that Society is willing to take the recommended land at the rate of Rs.1,000/- per sq.mt. by depositing necessary amounts within eight weeks from the date of the communication which will be sent within two weeks from receipt of Writ. If according to the Government, as submitted across the Bar, the claim of the Vechanvera Society no longer survives, the Respondent No.1 may pass necessary order after due notice and hearing to that society.

(iv) It will be open for the Government to take appropriate decision with respect to the allotment of remaining surplus vacant lands and its price (including one which was initially recommended to the Vechanvera Society, if its claim gets extinguished by the procedure stated above). The Government will take the decision with respect to disposal of that land in the light of the guidelines contained in the Resolution dt. 30th May, 1987.

(v) If the Government decides to allot this land to employees housing societies, all eligible societies will be entitled to lodge their claim before the District Land Committee .

(vi) The respondents nos. 1 and 2 will refund the amounts received from the respondents nos. 3 to 5 societies in excess of what would be due from them at the rate of Rs.1,000/- per sq.mts. for the area in excess of 6675 sq.mts., 3300 sq.mts. and 1650 sq.mts. respectively. The amount will be refunded within four weeks from today.

(vi) The respondents nos. 1 and 2 will pay to the petitioner a sum of Rs.5,000/- as costs for this petition.

Rule is made absolute accordingly. Writ to be issued immediately.

Sd/-

(H.L.GOKHALE)

20-11-97.

(ccs)